

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

WILLIAM DILMUS JONES,	*	
	*	
Movant,	*	
	*	CRIMINAL NO. 4:12-CR-6 (CDL)
vs.	*	
	*	CIVIL NO. 4:16-CV-196 (CDL)
UNITED STATES OF AMERICA,	*	
	*	
Respondent.	*	

O R D E R

This matter is before the Court pursuant to a Report and Recommendation by the United States Magistrate Judge entered on July 10, 2019. That Report and Recommendation recommended granting Movant's 28 U.S.C. § 2255 motion, vacating his sentence, and remanding the case for resentencing. The Magistrate's decision was based almost exclusively on an Eleventh Circuit three-judge panel opinion, *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), *reh'g granted*, No. 17-10473, 2019 WL 3072577 (11th Cir. July 15, 2019). That opinion was vacated for rehearing *en banc* on July 15, 2019, five days after the Magistrate's Report and Recommendation was entered. At that time, the Government still had nine days to object to the Report and Recommendation based on the Eleventh Circuit's decision to vacate *Moss*, but it did not. Therefore, the Court reviews the Recommendation for clear error.

Although the *Moss* decision is no longer binding precedent, it is sheer speculation whether the three judges' rationale in *Moss* will be abandoned when the Court of Appeals considers it *en banc*. Furthermore, the Government's decision not to object to the Magistrate's Recommendation in light of the vacating of the *Moss* decision suggests that the Government may be persuaded by the *Moss* rationale notwithstanding the Court of Appeals' decision to rehear it *en banc*. Under these circumstances, the Court cannot conclude that the Magistrate's Recommendation was clear error. Accordingly, the Court adopts the Recommendation of the Magistrate Judge, vacates the Movant's sentence, and orders a new sentencing hearing.¹ To the extent that Movant does not have counsel for the resentencing, the Magistrate shall appoint him counsel. A copy of this Order shall also be provided to the United States Probation Office for the Middle District of Georgia with direction that it prepare a revised presentence report in light of today's Order.

IT IS SO ORDERED, this 25th day of July, 2019.

S/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

¹ If the Court of Appeals in *Moss* determines *en banc* that the panel decision was wrongly decided, then this Court would apply the law as it exists at the time of the new sentencing hearing, which could result in the same sentence that Movant previously received. Accordingly, it may be appropriate to stay the sentencing hearing until a final decision has been rendered in *Moss*, particularly if it is unlikely that any new sentence will result in Movant's immediate release. If any party seeks a stay, they shall file a motion within 14 days of today's Order. Otherwise, the sentencing hearing shall be scheduled in due course.